

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of----)
)
MOLOKAI PUBLIC UTILITIES, INC.,)
WAI`OLA O MOLOKA`I, INC., and)
MOSCO, INC.)
)
For Temporary Rate Relief.)
_____)

Docket No. 2008-0115

ORDER DIRECTING MPL TO PARTICIPATE IN THIS PROCEEDING

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DEPT. OF COMMERCE AND
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STATE OF HAWAII

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ORDER DIRECTING MPL TO PARTICIPATE IN THIS PROCEEDING

By this Order, the commission directs MOLOKAI PROPERTIES LIMITED, dba MOLOKAI RANCH ("MPL") to fully participate in this proceeding as directed by the commission.

I.

Background

On June 16, 2008, the commission opened this docket to provide any required temporary rate relief, via a temporary surcharge, to MOLOKAI PUBLIC UTILITIES, INC. ("MPU"), WAI`OLA O MOLOKA`I, INC. ("Wai`ola"), and MOSCO, INC. ("Mosco") (collectively, "Utilities").¹ Based on the commission's review and analysis of the Utilities' available financial information, the commission proposed the following temporary rate relief for MPU and Wai`ola: (1) for MPU, an increase in revenues of \$297,965, which is 40.95% more than its 2007 reported

¹Order Instituting a Proceeding to Provide Temporary Rate Relief to Molokai Public Utilities, Inc., Wai`ola O Molokai, Inc., and Mosco, Inc., filed on June 16, 2008, in Docket No. 2008-0115 ("Opening Order").

water revenues of \$727,458; and (2) for Wai`ola, an increase in revenues of \$163,839, which is 121.50% more than its 2007 reported water revenues of \$134,813. The commission proposed a 0.00% increase over present rates for Mosco, as Mosco appeared to be financially viable and operating at a profit.

The commission named as parties to this proceeding: the Utilities, the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), MPL, and the COUNTY OF MAUI ("County") (collectively, "Parties").²

By letter filed June 18, 2008, MPL informed the commission that it would not be participating in this docket, as "[t]he proceeding is one involving the Utilities, not MPL."

II.

Discussion

A.

Commission Jurisdiction

In its June 18, 2008 letter, MPL argues that "the Commission is claiming a jurisdiction it does not possess" and that its "power to examine into transactions between public utilities and other corporations" is not a "grant of authority to the Commission over companies that are not public utilities with respect to temporary rate relief

²The Consumer Advocate is an ex officio party to any proceeding before the commission. See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

proceedings or any other non-investigatory matter." MPL is wrong.

As noted in the commission's Opening Order, HRS § 269-7 grants the commission "the power to examine into the condition of each public utility, the fares and rates charged by it, the value of its physical property, . . . the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations . . . and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

In addition, HRS § 269-8 states: "Every public utility or other persons subject to investigation by the commission, shall at all times, upon request, furnish to the public utilities commission all information that it may require respecting any of the matters concerning which it is given power to investigate."

As such, by virtue of its power to investigate the relationships between a public utility and other persons or corporations, the commission has jurisdiction over those other persons or corporations sufficient to require their compliance with that investigation. Here, for example, the commission is considering temporary rate increases for two of MPL's subsidiaries, MPU and Wai'ola, who have, along with MPL, asserted to the commission and others, that MPU and Wai'ola "will lack the financial resources to provide water and sewer services

after August of this year.”³ According to MPL, it is willing to provide the Utilities with “the financial support needed to cover these operating deficits only for a limited period of time.”⁴

At issue in this docket are the revenues, expenses and amount of rate relief required by the Utilities to continue operations beyond the August deadline set by MPL. Integral to the commission’s consideration of those issues is the amount of funds furnished to the Utilities by MPL. According to the Utilities, “[w]hile MPL was operating Molokai Ranch, the Ranch used water furnished by Wai`ola and MPU. MPL therefore provided Wai`ola and MPU with the funds necessary to cover the substantial deficit between the utilities’ revenues and their operating costs.”⁵ In addition, MPL has asserted that it “advanced” the Utilities “a total of \$580,000 in fiscal year 07 and for the 11 months of 2008 a total of \$566,000.00 for operating and capital improvements We will gladly work with the County or any other third party to attempt to reach a negotiated value of the assets of the utilities so that its debts can be paid.”⁶ Any alleged outstanding obligations are also an issue, which require MPL’s participation in this docket.

³Letter dated June 2, 2008, filed June 3, 2008, from MPL to Mayor Charmaine Tavares, at 1.

⁴Letter dated and filed May 30, 2008, from the Utilities to the commission, at 1.

⁵Id. at 2.

⁶Letter dated June 11, 2008, filed June 12, 2008, from the Utilities to the commission, at 2.

Another potential issue is MPL's promise in Wai'ola's application for a certificate of public convenience and necessity ("CPCN") that "[l]osses sustained by [Wai'ola] in its operations will be covered by additional capital contributions from Molokai Ranch, Limited [nka, MPL] or by loans."⁷ This promise was acknowledged by the commission in granting Wai'ola its CPCN.⁸ Again, in order to flesh out the issue, MPL is a necessary party to this proceeding.

In addition, as noted in the Opening Order, "MPL is affiliated with the Utilities, and owns property associated with the Utilities' service territories."⁹ It is the commission's understanding that MPL holds water-related assets in a "department" called "MPL Water"; that the assets consist of various pipelines ranging in size from 5" to 12" linking the mountain water system to reservoirs and storage tanks that supply water to the utilities, who serve the West end; and that the assets have a book value of \$12 million.

In addition to its relationship with the Utilities, MPL is also subject to commission jurisdiction through its provision of wastewater services to Maunaloa and Kualapu'u.

⁷Application for a Certificate of Public Convenience and Necessity, filed on October 14, 1991, in Docket No. 7122, at 6.

⁸Decision and Order No. 12125, filed on January 13, 1993, in Docket No. 7122, at 6 ("Applicant anticipates that operating expenses will exceed gross revenues in the near term. However, Applicant believes that revenues will increase with the development of Maunaloa Village. Applicant represents that any losses it sustains in its operations will be covered by additional capital contributions from Molokai Ranch or by loans. Molokai Ranch hopes to recoup its investment in the long term through future increases in rates and tap-in charges.").

⁹Opening Order at 15.

HRS § 269-7(b) states: "The commission may investigate any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity . . ." A public utility "[i]ncludes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise. . . any plant or equipment, or any part thereof, directly or indirectly for public use, for the . . . disposal of sewage; provided that the term shall include . . . [a]ny person insofar as that person owns or operates a private sewer company or sewer facility."¹⁰ As the operator of private sewer systems that provide service to Kualapu`u and Maunaloa, MPL is subject to commission jurisdiction.

Accordingly, for all of the foregoing reasons, the commission directs MPL to fully participate in this proceeding. Failure to do so may subject MPL to penalties as authorized by law.¹¹

B.

Information Requests

By letter dated June 5, 2008, the commission directed the Utilities to provide the following information and documentation:

- a transition plan for their continued operation beyond August 2008 which "should include a detailed

¹⁰HRS § 269-1.

¹¹HRS § 269-28.

description of what needs to be done to ensure that the Utilities are able to continue to provide service in the absence of a third party assuming responsibility for the systems";

- the financial requirements of each of the three Utilities to be self-sustaining and the impact on the Utilities' ratepayers, including detailed documentation as to the revenue requirements for each utility, their expenses, and the likely resulting rates that will be required to ensure the continued provision of utility services;
- the amount of money that MPL has been providing to the Utilities over the last two years broken down by month and by utility;
- a description of all utility assets, ownership and valuation of the assets and the terms of any conveyance of those assets;
- with regard to Mosco, an explanation as to why the Utilities have stated that "unless some public or private entity is located to take over the operation of these three companies" "there will probably be an unavoidable termination of service" to Mosco customers in August.

By letter dated June 11, 2008, the Utilities responded to the commission's June 5, 2008 letter, but failed to provide the information and documentation requested in the commission's June 5 letter.

By letter dated June 13, 2008, the commission again reiterated its request for information and documentation as set forth in its June 5, 2008 letter, pursuant to HRS §§ 269-8, 269-28. In its June 13, 2008 letter, the commission also requested financial information concerning the two unregulated sewer systems and an unregulated water system that MPL operates. The commission set June 20, 2008, as the deadline for receipt of the information and documentation.

By letter dated and filed June 19, 2008, the Utilities requested an extension of time of two working days to respond to the information requests in the commission's June 5 and 13 letters ("Extension Request"). According to the Utilities, they "have been making every attempt to gather the information requested by the deadline of June 20, 2008. Some of the analysis required is complex however and rather than submit incomplete information, or information that is not in an easily understood format, we would like to request an additional two working days to submit the complete package."¹² Having reviewed the Extension Request, the commission will grant the Utilities until June 25, 2008, to file with the commission all of the information and documentation requested by the commission in its June 5 and 13, 2008 letters, including the financial information on MPL's unregulated operations.

III.

Orders

THE COMMISSION ORDERS:

1. MPL shall fully participate in this proceeding as directed by the commission.
2. The Extension Request is granted. The Utilities and MPL have until June 25, 2008, to provide the commission with the information and documentation requested in the commission's June 5 and 13, 2008 letters.

¹²Letter dated and filed June 19, 2008, from the Utilities to the commission, at 1.

DONE at Honolulu, Hawaii

JUN 23 2008

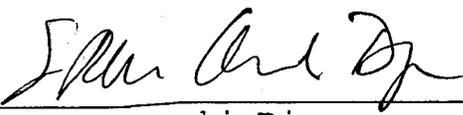
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2008-0115.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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